

TITLE 9. REHABILITATIVE AND DEVELOPMENTAL SERVICES

DIVISION 1. DEPARTMENT OF MENTAL HEALTH

NOTICE OF PROPOSED RULEMAKING

The Department of State Hospitals (formerly Department of Mental Health) encourages adoption of the proposed regulation amendment below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Department will hold a public hearing starting at 12:30 pm on November 3, 2014, at 1600 9th Street, Room 100, Sacramento, California. The building is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. Comments may also be submitted by facsimile (FAX) at (916) 651-3090 or by e-mail to DSH.Regulations@dsh.ca.gov. The written comment period closes at 5:00 p.m. on November 3, 2014. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Regulations Unit
Department of State Hospitals
1600 9th Street, Room 410
Sacramento, CA 95814

AUTHORITY AND REFERENCES

Authority: Welfare and Institutions Code sections 4005.1 and 4101 allow the Department to adopt and enforce rules and regulations necessary to carry out the duties of the Department.

References: Sections 4525, 4526, 4527, 4528, 4529, 4529.12, 14825, 14837, 14838, 87100, 87100.1, and 87102, Government Code; Sections 10115, 10115.1, 10115.2, 10115.3, 10115.9, 10124, 10250, 10251, and 10261 Public Contract Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Government Code (GC) section 4526 allows state agencies to contract directly with private architectural, landscape architectural, engineering, environmental, land surveying and construction project management firms. In order to implement this method of selection, state agency heads contracting for private architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management services must adopt, by regulation, procedures that assure that these services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices. Furthermore, these procedures shall assure maximum participation of small business firms. In addition, these procedures shall specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit government agency employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract.

These proposed regulations will:

- allow the Department of State Hospitals (DSH) to directly contract for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction management firms;
- assure that these services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed;
- assure that the services performed will be at fair and reasonable prices;
- assure maximum participation of small business firms;
- prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration; and
- prohibit government agency employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract.

These regulations would cause no significant differences in existing comparable federal regulations or statutes.

The Department has conducted an evaluation for any regulations that would relate to this proposed action and has determined that these are the only regulations dealing with the selection process for various architectural, landscape architectural, engineering, environmental, land surveying and construction project management firms. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing State regulations.

These regulations will allow the DSH to contract directly for these professional services thereby reducing administrative time for awarding contracts and increasing the ability to more effectively and efficiently manage the contracts.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: Approximate savings of \$20,000 - \$25,000 per contract that is currently charged by the Department of General Services.
- Cost to any local agency or school district which must be reimbursed in accordance with GC sections 17500 through 17630: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None
- Cost impacts on a representative private person or businesses: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Significant effect on housing costs: None.
- Small Business determination: The proposed action will not affect small businesses because it provides a competitive, equitable and fair opportunity for public firms, including small businesses, to compete for these contracts. The Department shall disclose its process for notifying small businesses as required in GC 14838.

Results of the Economic Impact Analysis:

Adoption of these regulations will not:

- create or eliminate total jobs within California;
- create new businesses or eliminate existing businesses within California;
- affect the current competitive process used by DGS, except that the process will be managed by the Department;

- increase or decrease investment in the state;
- create incentive for innovation in products, materials or processes; or
- obstruct potential benefits to the health, safety and welfare of the citizens of California. These regulations will not obstruct worker safety, the environment or quality of life.
- affect the expansion of businesses currently doing business in California.

Benefits that would be derived from this proposal:

- allows Department to contract with firms for fair and reasonable costs at the time the contract is selected;
- allows the Department flexibility in awarding contracts that are less complex and more technical in nature, through the competitive bid process;
- allows the Department to respond quickly to legislative changes and safety aspects for protecting patients and the staff;
- allows the Department to be able to independently administer and manage architectural, landscape architectural, engineering, environmental, land surveying and construction project management contracts in order to save time and costs.

CONSIDERATION OF ALTERNATIVES

A rulemaking agency must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to private persons and equally effective in implementing the statutory policy or other provision of law.

There are no other reasonable alternatives to these regulations. These contracts are either processed and awarded by DGS or the state agency.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Karen Gillham
Chief
Regulations Unit
Department of State Hospitals

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Telephone: (916) 653-2257
Desk: (916) 651-5578
E-mail: karen.gillham@dsh.ca.gov

The back-up contact person for these inquiries is:

Sherry Barandas
Staff Services Manager I
Regulations Unit
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Please direct requests for copies of the proposed text (the “express terms”) of the regulation, the initial statement of reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Ms. Gillham at the above address.

AVAILABILITY OF THE STATEMENT OF REASONS, TEXT OF THE PROPOSED REGULATION AMENDMENT, AND THE RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Ms. Gillham.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Department may adopt the proposed regulation amendment substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Karen Gillham at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Gillham at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed through our website at www.dsh.ca.gov.